

December 22, 1999

98-50

Proposed Amendment of the Michigan Court Rules  
for the Family Division of Circuit Court

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The Family Division Joint Rules Committee proposed several amendments to the Michigan Court Rules dealing with the operation of the Family Court Division of Circuit Court. This Court is now considering the adoption of these amendments. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford any interested person the opportunity to comment on the form or the merits of the proposal. We welcome the views of all who wish to address the proposal or who wish to suggest alternatives. Before adoption or rejection, this proposal will be considered at a public hearing by the Court. The Clerk of the Court will publish a schedule of future public hearings.

As whenever this Court publishes an administrative proposal for comment, we emphasize that publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form. It is proposed that Rules 3.201, 3.204, 3.215, 5.903, 5.935, 5.943, 5.953, 5.954, 6.901, 6.903, 6.931, 6.937, and 8.110, be amended as follows:

**RULE 3.201        APPLICABILITY OF RULES**

**(A)-(C)**     [Unchanged]

**(D)**    When used in this subchapter, unless the context otherwise indicates:

**(1)**    "Case" means an action initiated in the family division of the circuit court by:

**(a)**    submission of an original complaint, petition, or citation;

**(b)**    acceptance of transfer of an original action from another court or tribunal;  
                or

**(c)**    filing or registration of a foreign judgment or order.

**(2)**    "File" means the repository for collection of the pleadings and other documents and materials

related to a case. A file may include more than one case involving a family.

- (3) "Jurisdiction" means the authority of the court to hear cases and make decisions and enter orders on cases.
- (4) Unless otherwise expanded by local administrative order, for purposes of assignment to a judge of the Family Division, a "pending case" is a case over which the Family Division has jurisdiction and where one or more issues have not been decided or had a final judgment or order entered.

**RULE 3.204 PROCEEDINGS AFFECTING MINORS**

**(A)-(C)** [Unchanged]

- (D) The court may, upon motion of a party or on its own motion, for good cause shown, appoint a guardian ad litem to represent a child and assess the costs and reasonable fees against the parties involved in full or in part.

**RULE 3.215 DOMESTIC RELATIONS REFEREES**

**(A)-(F)(3)** [Unchanged]

- (4) A de novo hearing conducted pursuant to MCL 552.507; MSA 25.176(7) shall include the following:
  - (a) an opportunity for the parties, i.e. plaintiff and defendant, to testify before the judge;
  - (b) the judge shall review the record of the hearing before the referee and any memoranda, recommendations or proposed orders by the referee;
  - (c) the judge may allow additional testimony at the review hearing within the discretion of the court.
- (5) The court shall, on the basis of the record reviewed and the testimony heard at the de novo hearing, draw its own inferences and conclusions and arrive at an independent conclusion based upon the de novo hearing. The judge may affirm, modify or deny the referee recommendations or proposed orders in whole or in part.

**RULE 5.903            DEFINITIONS**

- (1) "Case" means an action initiated in the family division of the circuit court by:
  - (a) submission of an original complaint, petition, or citation;
  - (b) acceptance of transfer of an original action from another court or tribunal; or
  - (c) filing or registration of a foreign judgment or order.
- (2)-(5) [Formerly (1)-(4), redesignated, but otherwise unchanged]
- (6) "File" means the repository for collection of the pleadings and other documents and materials related to a case. A file may include more than one case involving a family.
- (7)-(8) [Formerly (5) and (6), redesignated, but otherwise unchanged]
- (9) "Jurisdiction" means the authority of the court to hear cases and make decisions and enter orders on cases.
- (10)-(11) [Formerly (7)-(8), redesignated, but otherwise unchanged]
- (12) Unless otherwise expanded by local administrative order, for purposes of assignment to a judge of the Family Division, a "pending case" is a case over which the Family Division has jurisdiction and where one or more issues have not been decided or had a final judgment or order entered.
- (13)-(24) [Formerly (9)-(20), redesignated, but otherwise unchanged]
- (B)(1)** [Unchanged]
- (2) Graduated sanctions may include imposing additional conditions of probation, extending the term of probation, imposing additional costs, ordering a juvenile who has been residing at home into an out-of-home placement, ordering a more restrictive placement, ordering state wardship for a child who has not previously been a state ward, or any other conditions deemed appropriate by the court. Imposition of adult sanctions in juvenile court on a juvenile who has not previously received adult sanctions shall also be considered a graduated sanction. Waiver of

jurisdiction to adult criminal court, either by authorization of a warrant or by judicial waiver, is not considered a sanction for purposes of these rules.

(3)-(7) [Formerly (2)-(6), redesignated, but otherwise unchanged]

(C)-(D) [Unchanged]

#### **RULE 5.935 PRELIMINARY HEARING**

(A)(1)-(2) [Unchanged]

(3) Special Adjournment; ~~Life-Offense~~ **Specified Juvenile Violation**. This subrule shall apply to a juvenile accused of an offense that allegedly was committed between the ~~15th~~ **14th** and 17th birthdate of the juvenile and which, if committed by an adult, would constitute a ~~life-offense~~ **specified juvenile violation** as specifically listed in MCL 712A.2(a)(1); MSA 27.3178(598.2)(a)(1). On request of a prosecuting attorney who has approved the submission of a petition with the court, conditioned on the opportunity to withdraw it within 5 days if the prosecuting attorney authorizes the filing of a complaint and warrant with a magistrate, the court shall comply with subrules (3)(a) through (c).

(a)-(c) [Unchanged]

(B)-(D) [Unchanged]

#### **RULE 5.943 DISPOSITIONAL PHASE**

(A)-(E)(1) [Unchanged]

(2) **In making second and subsequent dispositions in delinquency cases, the court shall consider imposing graduated sanctions as defined in MCR 6.903(B)(2).**

(3)-(5) [Formerly (2)-(4), redesignated, but otherwise unchanged]

#### **RULE 5.953 PRELIMINARY EXAMINATION IN DESIGNATED CASES**

(A)-(F) [Unchanged]

(G) Confinement. If the court has designated the case and finds probable cause that a felony or an offense for which an adult could be imprisoned for more than one year has been committed and probable cause that the juvenile committed the offense, the judge may confine the juvenile in the county

jail pending trial. If the juvenile is under 17 years of age, the juvenile may be confined in jail only if the juvenile can be ~~separated by sight and sound~~ held physically separate from adult prisoners and if the sheriff has approved the confinement.

#### **RULE 5.954 TRIAL OF DESIGNATED CASES**

Trials of designated cases are governed by subchapter 6.400 of the Michigan Court Rules except for MCR 6.402(A). The court may not accept a waiver of trial by jury until after the juvenile has been offered an opportunity to consult with a lawyer. ~~Pleas in designated cases are governed by subchapter 6.300 of the Michigan Court Rules.~~

#### **RULE 6.901 APPLICABILITY**

(A) [Unchanged]

(B) Scope. The rules apply to proceedings in the district court, ~~and the circuit court, and the Recorder's Court~~ concerning a juvenile against whom the prosecuting attorney has authorized the filing of a criminal complaint and warrant charging ~~an enumerated life offense~~ a specified juvenile violation instead of approving the filing of a petition in the juvenile court. The rules do not apply to a person charged solely with an offense in which the juvenile court has waived jurisdiction pursuant to MCL 712A.4; MSA 27.3178(598.4).

#### **RULE 6.903 DEFINITIONS**

(A)-(B) [Unchanged]

(C) "Court" means the circuit court ~~and the Recorder's Court of the City of Detroit~~ as provided in MCL 600.606; MSA 27A.606, ~~and MCL 725.10a(1)(c); MSA 27.3950(1)(1)(c)~~ and does not include the Family Division of the circuit court.

(D)-(L) [Unchanged]

#### **RULE 6.931 JUVENILE SENTENCING HEARING**

(A)-(E)(1) [Unchanged]

(2) ~~Burden of Proof. The prosecuting attorney has the burden of establishing by a preponderance of the evidence that the best interests of the juvenile and the public would be served by imposing a~~

~~sentence against the juvenile as though the juvenile were an adult offender.~~ Standard of Proof. The court must sentence the juvenile in the same manner as an adult unless the court determines by a preponderance of the evidence that the best interests of the public would be served by placing the juvenile on probation and committing the juvenile to state wardship.

- (3) Criteria. The court shall consider the following criteria in determining whether to impose a sentence against the juvenile as though an adult offender or whether to place the juvenile on juvenile probation and commit the juvenile to state wardship, giving ~~each weight as appropriate to the circumstances~~ greater weight to the seriousness of the alleged offense and the juvenile's prior record of delinquency:

~~(a) the juvenile's prior record and character, physical and mental maturity, and pattern of living;~~

~~(b) the seriousness and circumstances of the offense;~~

~~(c) whether the offense is part of a repetitive pattern of offenses which would lead to the determination;~~

~~(i) that the juvenile is not amenable to treatment, or~~

~~(ii) that, despite the juvenile's potential for treatment, owing to the nature of the delinquent behavior, the juvenile is likely to disrupt the rehabilitation of others in the treatment program owing to the nature of the delinquent behavior;~~

~~(d) whether, despite the juvenile's potential for treatment, the nature of the juvenile's delinquent behavior is likely to render the juvenile dangerous to the public when released at age 21;~~

~~(e) whether the juvenile is more likely to be rehabilitated by the services and facilities available in the adult programs and procedures than in the juvenile programs and procedures; and~~

~~(f) what is in the best interests of the public welfare and the protection of the public security.~~

- (a) The seriousness of the alleged offense in terms of community protection, including, but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines, the use of a firearm or other dangerous weapon, and the impact on any victim;
- (b) The culpability of the juvenile in committing the alleged offense, including, but not limited to, the level of the juvenile's participation in planning and carrying out the offense and the existence of any aggravating or mitigating factors recognized by the sentencing guidelines;
- (c) The juvenile's prior record of delinquency including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior;
- (d) The juvenile's programming history, including, but not limited to, the juvenile's past willingness to participate meaningfully in available programming;
- (e) The adequacy of the punishment or programming available in the juvenile justice system; and
- (f) The dispositional options available for the juvenile.

(F) [Unchanged]

**RULE 6.937 COMMITMENT REVIEW HEARING**

(A)-(B) [Unchanged]

- (C) Final Review Hearings. The court must conduct a final review hearing pursuant to MCL 769.1b(5)-(7); MSA 28.1072(5)-(7). The prosecuting attorney has the burden of proving that the best interests of the public would be served by imposing any other sentence provided by law for an adult offender. At the hearing, the court must determine, using the following criteria, whether to sentence the juvenile as though an adult:
  - (i) the extent and nature of the juvenile's participation in education, counseling, or work programs;
  - (ii) the juvenile's willingness to accept responsibility for prior behavior;

- (iii) the juvenile's behavior in the current placement;
- (iv) the prior record and character of the juvenile and physical and mental maturity;
- (v) the juvenile's potential for violent conduct as demonstrated by prior behavior;
- (vi) the recommendation of the institution, agency, or facility charged with the juvenile's case for the juvenile's release or continued custody; and
- (vii) any other information the prosecuting attorney or the juvenile may submit.

**RULE 8.110 CHIEF JUDGE RULE**

**(A)-(B)(4)** [Unchanged]

- (5) The Chief Judge of the Circuit Court is responsible for the direction and supervision of the Friend of the Court, referees, court clerks, and other personnel employed by the court to assist in the work of the court.

**(C)(1)-(7)** [Unchanged]

- (8) To the extent authorized by the Chief Judge of the Circuit Court by a general order, the Friend of the Court, referees, court clerks, and other court employees designated in the order, shall have the authority, until the further order of the court, to do all acts required of the Circuit Judge, except judicial acts in a contested matter.
- (9) The order of the Chief Judge, identified in sub-rule (8), may refer to the power:
  - (a) to set the time and place for hearings and all matters; administer oaths; sign notices of hearings; subpoenas; conduct conferences with attorneys; and take testimony as provided by law or court rule; and
  - (b) to sign or by device indicate the name of a judge to all orders of the court, with the same force and effect as though the judge had signed them. In all such cases, the designated employee must place his or her initials under the name of the judge.

**(D)** [Unchanged]



#### STAFF COMMENT

A group of circuit court judges, probate judges, various court personnel and members of interested sections of the State Bar was convened to participate in the development of rules which would apply to the operation of the Family Court Division of Circuit Court. This Family Division Joint Rules Committee has presented these proposed amendments to several rules. These proposed amendments, while not all encompassing, do provide for the essential elements of the operation of family court with respect to a few specific areas.

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.

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Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption in its present form. Timely comments will be substantively considered, and your assistance is appreciated by the Court.

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A copy of this order will be given to the secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on this proposal may be sent to the Supreme Court clerk within 60 days after it is published in the *Michigan Bar Journal*. When filing a comment, please refer to our file No. **98-50**.